

This is a sample of a **Memorandum of Agreement**. Independent contractors may find this to be a useful tool when contracting.

When you receive your independent contractor certification you are acknowledging that you are engaged in an independently established business. As such, if you are hurt on the job you are not entitled to workers' compensation, and if the job ends you are not entitled to unemployment insurance. Other rights, such as wrongful discharge and wage protection statutes do not apply to you as an independently established businessperson. Additionally you are responsible for reporting your own taxes.

Experience indicates that a major source of controversy between businesses such as yours and their clients is misunderstanding over their relationship to one another. Included in this are disagreements between you and your client over such things as to what work was to be done, when it is to be accomplished, how it is to be accomplished, and the price to be paid for the service performed.

As a service to you, an independently established business owner, the Department of Labor and Industry offers the following suggested format for you to use when contracting with another to perform a project. There is no requirement that you use this form, but it is hoped that this form, or one of a similar nature that you develop for your business, will result in a good and productive working relationship between you and your client. As the old saying goes, "an ounce of prevention is worth a pound of cure". It is hoped that the work you do up front as you enter into agreements will prevent problems down the line between you and your customer.

## MEMORANDUM OF AGREEMENT

This understanding is made this \_\_\_\_\_ day of \_\_\_\_\_ between \_\_\_\_\_, hereafter referred to as the hiring agent and \_\_\_\_\_, hereafter referred to as the contractor/ independent business owner.

In consideration of payment in the amount of \_\_\_\_\_ the contractor/independent business owner agrees to complete the below described work on or before \_\_\_\_\_:

**Description of the project, including services to be performed and location or locations where services will be performed:**

**Payment will be made as follows:**

It is understood by the contractor/independent business owner and the contracting authority that their relationship is not that of employee to employer. Contractor /independent business owner acknowledges and understands that provisions of law, including workers' compensation, unemployment insurance, wage and hour as well as all applicable taxes are the responsibility of the contractor/independent business owner and not the contracting authority. As evidence of the same the contractor/independent business owner has supplied the contracting authority with a copy of relevant and current independent contractor certification or construction contractor certification as recognized by the State of Montana, Department of Labor and Industry, a copy of which is incorporated as part of this understanding.

The contracting authority acknowledges and understands that in order to maintain an independent contractor relationship between the contractor/independent business owner and the contracting authority the contracting authority may not exercise control (some indicators of which are on the back) over the manner and detail in which the work is performed. The contracting authority shall be concerned only with the delivery of the finished product within the timeframes agreed to by the parties. The contracting authority recognizes that by exercising control over the contractor/independent business owner an employment relationship may exist.

Contractor/independent business owner further represents to be engaged in an independently established trade, profession or occupation free from exercise of control by the contracting authority other than as to delivery of a finished product in the timeframes agreed to by the parties with payment to be made as further agreed by the parties.

**SIGNING THIS DOCUMENT WILL COMMIT YOU TO CERTAIN LEGAL RESPONSIBILITIES. IF YOU HAVE ANY QUESTIONS YOU SHOULD CONSULT WITH AN ATTORNEY**

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Independent Contractor/ Independent business owner

\_\_\_\_\_  
Contracting authority

The Montana Supreme Court has stated the following four factors are indicators of control in a working relationship.

1. Evidence of control including the right to control;
2. the furnishing of equipment;
3. the method of payment; and
4. the right to fire without liability.

The consideration given to each of these factors is not a balancing process. One can be determined to be an employee simply by the strength of one of these factors, while all need to be met to be an independent contractor.

Here are some common things to think about when determining control:

- Payment is on a time basis rather than on a bid or project completion basis.
- The pay is determined by the hiring agent, as opposed to the sub contractor submitting a bid establishing the cost for the project.
- The hiring agent provides substantial tools and equipment necessary to perform the job functions as opposed to the sub-contractor providing their own tools and equipment. The hiring agent instructs what tools to use and how to use them.
- The hiring agent oversees how the work is performed as opposed to the sub contractor working the project in the manner and means they see appropriate.
- The hiring agent explains, shows, and/or trains the subcontractor how to perform the work. If you receive extensive instructions as how work is to be done, this suggests an employee relationship.
- The hiring agent can release the sub contractor from the job without notice or the opportunity to fix the problem. When the working relationship can be terminated without liability the hiring agent has the control.
- When there is then no opportunity for profit or loss for the worker, they do not have control.
- The hiring agent requires a log of time the sub contractor works on the job is an indication they have control.
- If you have a significant investment in your work, you have control of the business part of the work.